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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 533

MENE GRANDE OIL COMPANY,

Petitioner,

—v.—

MOBIL TANKERS COMPANY S.A. and
SOCONY MOBIL OIL COMPANY, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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MOBIL TANKERS COMPANY S.A. and
SOCONY MOBIL OIL COMPANY, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Mene Grande Oil Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered July 27, 1966.

Citations to Opinions Below

The District Court opinion is reported at 236 F, Supp. 362. The Court of Appeals opinion is reported at —— F.2d —— and printed in Appendix A *infra*, pp. 17-24.

Jurisdiction

The judgment of the Court of Appeals was entered on July 27, 1966.

The jurisdiction of this Court is invoked under 28 U. S. Code §1254.

Questions Presented

1. When a District Court, after making careful findings of fact, has, in the exercise of its judicial discretion, dismissed an admiralty suit on grounds of *forum non conveniens,* may the Court of Appeals flout the "clearly erroneous" mandate of FRCP 52(a) merely because the matter was presented on affidavits?

2. In an admiralty suit in the District of Delaware by a Panama Corporation as owner of a Panama-flag ship and as bailee of her cargo, to recover property damage caused by an explosion and fire on that ship while she lay at petitioner's wharf in Venezuela, where the District Court has found as fact that suit in Delaware amounts "almost to injustice" to petitioner and, in the exercise of its judicial discretion, has dismissed the libel, may the Court of Appeals consider the matter *de novo* and reverse and reinstate the libel merely because it entertains a different view?

Rule Involved

F. R. C. P. 52(a) reads, in pertinent part: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Statement

Respondent Mobil is a Panama corporation, wholly owned by respondent Socony, an American corporation, and is, as the District Court found, "an expatriate which, for its own selfish purposes, has chosen to go to a foreign country to incorporate; whose business is not essentially American but worldwide trade." It owns and/or charters a fleet of ships, of which the MOBIL ASTRAL is one, which are registered under foreign flag, are officered and manned by foreign crews and are engaged in worldwide trade, only incidentally touching at United States ports.

Respondent Socony, incorporated in the United States, engaged in the recovery and worldwide delivery of oil, with considerable oil interests in Venezuela, contracted with petitioner Meneg to store its oil at Meneg's Terminal in Venezuela, there to be loaded into such ships as might be sent.

Meneg is "nominally an American corporation" which does no business and has no employees in Delaware. It has a *bona fide* domicile in Venezuela and its principal activities, drilling for oil, "take place exclusively in Venezuela." It stored Mobil's oil at its Terminal in Venezuela.

In March, 1960 Mobil's tanker ASTRAL was sent to Meneg's Venezuela Terminal to load a cargo belonging to Socony. As loading was being completed an explosion and fire occurred on board the ASTRAL, which damaged the ASTRAL and her cargo.

Mobil sued Meneg in the District Court for Delaware (because Meneg was incorporated there) to recover the cost of repairing the ASTRAL and, as bailee, for the cargo

loss. Meneg moved to dismiss on grounds of *forum non conveniens.*

The District Court (Layton, *D.J.*) considered extensive affidavits and heard oral argument by the two principal affiants (counsel) and, applying the criteria used by this Court in *Gulf Oil Corp.* v. *Gilbert,* 330 U. S. 501, granted the motion for five reasons:

1. Mobil is an expatriate whose business is not essentially American;

2. Meneg, although incorporated in Delaware, does no business there and has a *bona fide* Venezuelan domicile where all its operations are conducted;

3. The incident occurred in Venezuela where Mobil might have anticipated some such happening in view of the numerous visits of its ships there;

4. Practically "all sources of knowledge relating to this accident" arise "out of the very site itself or in the minds of witnesses nearly all of whom, except experts, reside in foreign countries"; and a trial here would therefore amount "almost to injustice" to Meneg.

5. A trial here "might very well plague this Court with problems of foreign law, all avoided if this case is litigated in Venezuela where it arose."

Mobil moved to reargue; and Socony, cargo owner, petitioned to intervene although it had been content theretofore to allow Mobil to sue as its bailee. After considering new briefs the Court granted Socony's motion to intervene but regranted the motion to dismiss saying that Socony's

nationality and interest as cargo owner had been fully considered in reaching its original decision and that to let Socony's nationality turn the balance would be like tail wagging dog.* The Court pointed out that

> "* * * in essence, this is a suit between two foreign corporations doing substantially all their business abroad, concerning a cause of action which happened 2,000 miles away where literally, not a single witness as to the negligence charged, except experts, lives in the United States, and where, if tried in this country, the law of a foreign country would control" (p. 370).

The Court of Appeals holds flatly that the "clearly erroneous" rule of F. R. C. P. 52(a) "is inapplicable in the instant case. Since the matter was presented to the lower Court on affidavits without oral testimony the findings of fact are reviewable free of the impact of the rule"; citing two of its own decisions but none from other Circuits.

The Court of Appeals conceded that the refusal of the District Court to entertain jurisdiction under *forum non conveniens* "is within its sound discretion" but nevertheless declared that "the ultimate inquiry" for it to make was, not whether the District Court had abused its sound judicial discretion, but "whether the retention of jurisdiction by the District Court would best serve the convenience of the parties and the ends of justice."

The Court of Appeals, although finding that "the balance of convenience seems to favor Meneg but slightly", dealt with the whole matter *de novo,* misunderstood the District

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* Socony's alleged cargo damage is only one-tenth Mobil's alleged damage.

Court's decision,* and found, contrary to the District Court's findings, that the citizenship of the belated appearing Socony (cargo owner) was determinative and that to relinquish jurisdiction "could" [the Court did not say "would"] result in detriment to libellants' causes of action.

Lest there be a misapprehension of a harsh result that the respondents would be time barred in Venezuela by a denial of a forum here, petitioner has stipulated to waive any such defense provided respondents institute suit in Venezuela within one year after final determination of this motion.

Reasons for Granting the Writ

1. Conflict Between the Circuits.

The Court of Appeals decision as to the application of the "clearly erroneous" rule of F. R. C. P. 52(a) to cases decided on depositions is diametrically opposed to the decisions of at least six other circuits. The Court below read F. R. C. P. 52(a) as if it read

> Findings of fact shall not be set aside unless clearly erroneous where the trial court has had an opportunity

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* The Court of Appeals said that the District Court "seemingly treated the suit as one between foreigners." But the District Court correctly dubbed Mobil an expatriate and correctly found the facts as to the citizenship, domicile and place of business of the parties as follows:

> "we have a foreign corporation, Mobil, neither domiciled in, nor a resident of, the United States, instituting suit against Mene Grande, a United States resident, but not domiciled here, based on a cause of action which arose thousands of miles away and where the United States resident *does not* want to litigate * * *" (p. 369).

> to judge of the credibility of witnesses, but where the trial court has not had such an opportunity the "clearly erroneous" rule does not apply.

However, according to the decisions of at least six other Circuits Rule 52(a) means

> Findings of fact shall not be set aside unless clearly erroneous whether or not the trial court has had an opportunity to judge of the credibility of witnesses, but where it has had that opportunity due regard shall be given to that fact.

First Circuit: *Texas Co.* v. *R. O'Brien & Co.*, 242 F. 2d 526, 529 (1957).

Fourth Circuit: *Summers* v. *Watkins Motor Lines*, 323 F. 2d 120, 122 (1963).

Sixth Circuit: *Krumholz* v. *Gott*, 315 F. 2d 575, 580 (1963).

Eighth Circuit: *Holt* v. *Werbe*, 198 F. 2d 910, 917 (1952).

Ninth Circuit: *Lundgren* v. *Freeman*, 307 F. 2d 104, 113-115 (1962); *United States* v. *First Security Bank*, 334 F. 2d 120, 121.

Tenth Circuit: *Mid-Continent Casualty Company* v. *Everett*, 340 F. 2d 65, 70 (1965).

Typical of the foregoing decisions is the following from *Texas Company* v. *R. O'Brien & Co., supra*:

> "In our opinion Rule 52(a) unambiguously governs all findings, and its additional caveat, that due regard is to be given to the trial court's opportunity to judge credibility, is merely cautionary advice, not a variation in the scope of review" (p. 529).

Such was the view of Judge Clark, the draftsman of Rule 52 and Reporter of the Committee. *Special Problems in Drafting and Interpreting Procedural Codes and Rules,* 1950, 3 Vanderbilt Law Review 493, 505.

This Court has never squarely decided whether findings based on affidavits or depositions are immune to the "clearly erroneous" rule, but its decisions in *United States* v. *Gypsum Co.,* 333 U. S. 364, 394-5 and in *Commissioner* v. *Duberstein,* 363 U. S. 278, 289-90 are the foundation stones of the Court of Appeals' decisions last cited above. The rationale of *Duberstein* is particularly apposite here. This court said

> "Decision of the issue presented in these cases must be based ultimately on the application of the fact finding tribunal's experience with the mainsprings of human conduct to the totality of the facts of each case." 363 U. S. at 289.

There was another reason for the Court of Appeals not to brush aside Rule 52(a). Although, technically, the District Court did not hear or see any "witnesses" it did hear oral argument by the principal affiant on each side. The basic issue was "conveniens". This turned largely upon how many witnesses each side would need at trial, and counsel on each side were the principal affiants on this issue. On oral argument the Court heard each of these affiants for upwards of an hour and put questions to them and received answers. In this sense the Court had the kind of opportunity envisaged by the Rule "to judge of the credibility" of the two principal "witnesses."

The conflict between the Circuits on the present point is total. Six are diametrically opposed to what the Third Cir-

cuit has held in this case. Decisions can be found in the other five Circuits which support the opposite view. The citations to Rule 52(a) on this precise point cover many, many pages and scores of cases are pending today which will come to be reviewed on one or another interpretation of the Rule. The conflict cries out for decision by this Court.

2. The Public Interest and Sound Judicial Administration.

The public interest, the interest of all litigants, require that appellate judicial authority confine itself, or be required to confine itself, within the proper boundaries of its appellate function, but the Court below went beyond those boundaries in two respects.

The Court below gave no consideration to whether or not the District Court had exercised its judicial discretion soundly but proceeded at once to consider and decide the matter *de novo,* on the merits of the motion as it viewed them, although the District Court had granted the motion as a matter of judicial discretion (p. 370).

The question for the Court of Appeals was not, Should the motion to dismiss be granted? but was, Did the District Court abuse its judicial discretion? *Burford* v. *Sun Oil Co.,* 319 U. S. 315, 318; *Alabama Com'n* v. *Southern R. Co.,* 341 U. S. 341, 345; *Charter Shipping Co.* v. *Bowring &c.,* 281 U. S. 515, 518; *Hartford-Empire Co.* v. *Obear-Nester Glass Co.,* 8 Cir., 95 F. 2d 414, 417; *Ford Motor Co.* v. *Ryan,* 2 Cir., 182 F. 2d 329, 330, cert. denied, 340 U. S. 851 (1950); *Humble Oil & Ref. Co.* v. *Bell Marine Serv. Inc.,* 5 Cir., 321 F. 2d 53, 54-5 (1963); *Goranson* v. *Kloeb,* 6 Cir., 308 F. 2d 655, 657 (1962); *McGraw-Edison Co.* v. *Van Pelt,* 8 Cir., 350 F. 2d 361 (1965); and *A. Olinick and Sons* v. *Dempster*

Brothers, Inc., 2 Cir., —— F. 2d ——, decided August 8, 1966 where the Court said:

> "What emerges from a review of the cases is a strong sense of appellate reluctance to interfere with the district court's exercise of its discretion under 28 U. S. C. Section 1404(a). The reasons for this reluctance are not hard to find. * * * [T]he courts of appeals are aware that a trial judge, with his superior opportunity to familiarize himself with the nature of the case and the probable testimony on trial is better able to dispose of Section 1404(a) motions: * * * and that extended review by the appellate courts * * * will prolong litigation and thwart the objectives of speedy and efficient trial * * *.
>
> "* * * Mandamus does not lie to review mere error in the disposition of Section 1404(a) motions, but only to redress a clear-cut abuse of discretion. * * * we cannot hold that the trial court's decision to transfer the present case, made only after oral argument and the submission of thorough affidavits and memoranda of law, * * * and on careful consideration of the convenience of parties and witnesses and the interest of justice was a clear-cut abuse of discretion."

Friendly, *C.J.*, concurring said:

> "[O]n the test I think proper, we could have dismissed the petition on a mere reading of the judge's memorandum, which made clear that he acted judicially although, in my view, in this instance injudiciously."

The Court of Appeals disregarded the public interest and the fixed rules of sound judicial administration.

The Court of Appeals decided the fact issues for itself, without considering whether or not the District Court's findings were "clearly erroneous", although there can be no doubt that the proper trier of the facts is the District Court and that the proper function of the Court of Appeals is merely to be sure that there was adequate evidence to support the findings made and that correct rules of law were properly applied. In *Pendergrass* v. *New York Life Ins. Co.*, 8 Cir., 181 F. 2d 136 the Court said

> "The entire responsibility for deciding doubtful fact questions in a non-jury case should be, and we think it is, that of the district court. The existence of any doubt as to whether the trial court or this Court is the ultimate trier of fact issues in non-jury cases is, we think, detrimental to the orderly administration of justice, impairs the confidence of litigants and the public in the decisions of the district courts, and multiplies the number of appeals in such cases" (p. 138).

In *Cleo Syrup Corporation* v. *Coca-Cola Co.*, 8 Cir., 139 F. 2d 416, the Court said that

> "The power of a trial court to decide doubtful issues of fact is not limited to deciding them correctly" (p. 417).

The Court of Appeals cannot substitute its judgment for that of the District Court "if it involves a finding of fact." *Monroe Auto Equipment Company* v. *Superior Industries, Inc.*, 9 Cir., 332 F. 2d 473, 477.

If Appellate Courts are held within their proper boundaries, the facts will be more truly determined by leaving their determination to the District Court; fewer appeals will be taken on speculation; and the public interest will be

much better served by the resulting expedition of the judicial process.

3. *Forum Non Conveniens.*

If the decision below is allowed to stand the doctrine of *forum non conveniens* is dead.

The District Court said that

> "in essence, this is a suit between two foreign corporations, doing substantially all their business abroad, concerning a cause of action which happened 2000 miles away where, literally, not a single witness as to the negligence charged, except experts, lives in the United States, and where, if tried in this country, the law of a foreign country would control. * * * and I again point to the difficulty facing an American court in applying the Civil Law of Venezuela, where already, in the preliminary phases of this case, the opposing Venezuelan lawyers have on two occasions been in disagreement as to questions of law and practice in their own country" (p. 370).

Nevertheless, the Court of Appeals was persuaded that Socony's American nationality was a determining factor in retaining jurisdiction (p. 21). But in *Koster* v. *Lumbermens Mutual Co.*, 330 U. S. 518, this Court noted that corporations often obtain charters from States where they do nothing but maintain an agent to comply with local requirements, and that corporate domicile in such circumstances is entitled to little consideration under the doctrine of *forum non conveniens* "which resists formalization and looks to the realities" (pp. 527-8).

There is no case holding that American nationality is decisive and in *Swift & Co.* v. *Compania Caribe,* 339 U. S. 684, this Court expressly left the question open (p. 697). In *Burt* v. *Isthmus Development Company,* 5 Cir., 218 F. 2d 353, 357, the Court refused to hold that American nationality is decisive and considered all the relevant criteria at some length. In *Cuba R.R. Co.* v. *Crosby,* 222 U. S. 473, this Court used language singularly applicable here:

> "* * * it should be remembered that parties do not enter into civil relations in foreign jurisdictions in reliance upon our courts. They could not complain if our courts refused to meddle with their affairs and remitted them to the place that established and would enforce their rights" (p. 480).

The District Court found that a trial here instead of in Venezuela "would operate either unfairly to the advantage of libelant [Mobil], or to the strong disadvantage of the respondent [Meneg]" (p. 368) whereas, in Venezuela, all "will receive a fair trial" (p. 369). The Court found:

> "(22) Libelant [Mobil] would not be prejudiced by having to try this case under Venezuelan court practice. This practice does differ from the practice of the federal courts in this country in numerous respects. * * * but, libelant's case would be subject to the law of Venezuela in any event and the procedural difference between the court practice of Venezuela and the United States are not so drastically different as to affect libelant's chance of recovery.
>
> "(23) One of libelant's scarcely concealed, and very strong reasons, for seeking a trial on neutral ground in the United States is the fact that it fears that

> Mene Grande, being domiciled in Venezuela and having a large payroll in that country, may enjoy an advantage in the courts of that country. Inasmuch as the case in Venezuela would be tried by a single judge, this Court does not view libelant's fears with great concern because the trial being without jury in Venezuela, it must be assumed that judges of courts of civilized countries such as Venezuela would be as free from prejudice as in this country" (p. 365).

Nevertheless, the Court of Appeals considered that the procedural differences "could result in serious detriment" to respondents (p. 22). Respondents urged below that pre-trial procedures available here are largely nonexistent in Venezuela. Petitioner urged, and the District Court found, that those available in Venezuela are adequate. Petitioner particularly urged that respondents had not demonstrated any *need* for pre-trial procedures because the explosion and fire occurred on board their own vessel, in broad daylight, and fifteen to twenty members of her crew, Mobil employees, were present on deck and saw what happened. The use of the word "could" by the Court of Appeals is, we feel, significant. If the District Court's finding that a trial in Venezuela would not prejudice respondents was "clearly erroneous" the Court had only to say that a Venezuelan trial "would" prejudice respondents. Doubtless the Court would have taken that simple stand if it had reached such conclusion. However, it resorted to unusually vehement and critical language as regards petitioner's contention that respondents had not established that pre-trial procedures were needed saying that "The mere statement of this presumptuous proposition demonstrates its absurdity" (p. 23). Where the issue was simply

whether or not respondents had demonstrated a *need* for pre-trial procedures, we submit the use of the word "could" instead of "would" by the Court, and its resort to criticism *ad hominum* ("presumptuous") demonstrate a lack of conviction in the Court that the District Court was wrong.

When American interests go abroad to do business they should accept the chance of becoming involved in litigation abroad and, we submit, should not clog the already crowded Courts in the United States with problems which originate abroad, before the eyes of foreign witnesses, and which must be determined by foreign law.

In view of the increasing involvement of American capital abroad, we submit that this is a matter of considerable public interest.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Dated: New York, New York
September 1, 1966

Respectfully submitted,

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Counsel for Petitioner

APPENDIX A

Opinion of the Court

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15314

MOBIL TANKERS COMPANY, S.A., a Corporation of the Republic of Panama, and SOCONY MOBIL OIL COMPANY, INC., a New York Corporation,

Libellants-Appellants,

—v.—

MENE GRANDE OIL COMPANY, a Delaware Corporation,

Respondent-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

Argued November 18, 1965

Before:

KALODNER, *Chief Judge,*
McLAUGHLIN and SMITH, *Circuit Judges.*

OPINION OF THE COURT—Filed July 27, 1966

By SMITH, *Circuit Judge.*

This suit in admiralty was brought by Mobil Tankers Company (Mobil) to recover for vessel and cargo damage sustained as a result of an explosion and fire allegedly caused by the negligence of Mene Grande Oil Company (Meneg). Mobil is a Panamanian corporation having its principal office and place of business in New York City; it is a wholly owned subsidiary of Socony Mobil Oil Company (Socony), a New York corporation. Meneg is a Delaware corporation having a place of business in Puerto La Cruz, Venezuela, where it operates a terminal and tank farm for the storage of oil. It is a wholly owned subsidiary of Gulf Oil Corporation (Gulf) and its principal office, like that of Gulf, is in Pittsburgh, Pennsylvania. The explosion and fire occurred while the Mobil vessel was taking on a cargo of oil, owned by Socony, at Meneg's terminal. It is conceded that the issues of liability and damages must be decided under the appropriate provisions of the Civil Code of Venezuela.

Meneg filed a motion requesting the court below to decline jurisdiction under the doctrine of *forum non conveniens.* The court granted the motion holding that the trial of the suit in the District Court for the District of Delaware would result in "very strong inconvenience to respondent amounting almost to injustice." 236 F. Supp. 362, 368. After the court announced its decision, Socony filed a motion for leave to intervene as a libellant. RULES OF PRACTICE IN ADMIRALTY, &c., rule 34, 28 U. S. C. A. This motion was properly granted. The court recognized that Socony, as owner of the cargo, had a real interest in the litigation and was entitled to sue in its own right. However, adhering to its original decision, the court denied an ap-

plication by Mobil and Socony for leave to reargue the issues raised by Meneg's motion and dismissed the suit. This appeal followed.

Meneg argues that the lower court's findings of fact are presumptively correct and our right to review them is circumscribed by the "clearly erroneous" rule. This rule is inapplicable in the instant case. Since the matter was presented to the lower court on affidavits without oral testimony the findings of fact are reviewable free of the impact of the rule. *State of Maryland* v. *United States,* 329 F. 2d 722, 723 (3rd Cir. 1964), affd., without consideration of the question 381 U. S. 41; *United States* v. *United Steelworkers of America,* 271 F. 2d 676, 685 (3rd Cir. 1959), affd., without consideration of the question 361 U. S. 39. We are in as good a position as was the trial court to evaluate the evidence, draw the inferences of which the evidence is reasonably susceptible, and decide the critical questions raised on this appeal.

It is well settled that under the rule of *forum non conveniens* the refusal of the district court to entertain a suit in admiralty is within its sound discretion. *Swift & Co.* v. *Compania Caribe,* 339 U. S. 684 (1950); *Canada Malting Co.* v. *Paterson Co.,* 285 U. S. 413 (1932). The term "sound discretion" as used in the rule means "a discretion exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law." *Langnes* v. *Green,* 282 U. S. 531, 541 (1931). The ultimate inquiry is whether the retention of jurisdiction by the district court would best serve the convenience of the parties and the ends of justice.

The court's discretion under the common law rule cannot be equated with its authority to transfer an action to

another court of competent jurisdiction under § 1404(a) of Title 28 U.S. C. A., enacted in 1948. The court has a broader discretion in the application of the statute than in the application of the rule. *Norwood* v. *Kirkpatrick,* 349 U. S. 29 (1955), citing with approval *All States Freight* v. *Modarelli,* 196 F. 2d 1010 (3rd Cir. 1952). A court's discretion under the rule is subject to recognized limitations and this is so because of the harsh consequences which may follow dismissal of a law suit. *Ibid.*

The doctrine of *forum non conveniens,* while rather simple in principle does not lend itself to meaningful generalization when its application to concrete situations is attempted. However, the invocation of the doctrine is governed by the criteria established in a long line of decisions. Although neither a case in admiralty nor one involving foreigners, *Gulf Oil Corp.* v. *Gilbert,* 330 U. S. 501 (1947) is relevant insofar as it provides such criteria.

The factors which must be considered and weighed include the following: libellant's choice of forum; status of the parties; convenience of parties and witnesses; access to sources of proof; cost of obtaining the attendance of willing witnesses; possibility of a view of the premises, if appropriate; relative advantages and obstacles to a fair trial; and, possible difficulty in the application of foreign law. Unless "the balance is strongly in favor of the [respondent], [the libellant's] choice of forum should rarely be disturbed.". *Gulf Oil Corp.* v. *Gilbert,* supra, 508.

The court below seemingly treated the suit as one between foreigners in apparent disregard of the status of Socony and Meneg as citizens of the United States and, for the purposes of venue, residents of the judicial districts in

which they were incorporated. 28 U. S. C. A. § 1391(b) and (c). This treatment rested on a rationale with which we cannot agree. The suit between Socony and Meneg was one between citizens; the presence of Mobil as a libellant, suing in its own right, in no way changed this situation. The "discretionary power of a court of admiralty to relinquish jurisdiction when the suit is between foreigners furnishes no pattern" for a situation where, as here, citizens are involved. *Isbrandtsen Co. Inc.* v. *Lloyd Brasiliero Patrimonio Nacional, et al.,* 85 F. Supp. 740 (E. D. N. Y. 1949).

Although Socony's intervention was somewhat belated it had a real interest in the suit from the beginning, both as the corporate parent of Mobil and the owner of the cargo. This interest, which the lower court regarded as minimal and of no significance, was sufficient to bring "into force considerations very different from those in suits between foreigners." *Swift & Co.* v. *Compania Caribe,* supra, 697 (1950). A citizen of the United States may have no absolute right to have his case tried in a federal court but his election of such a forum should not be disregarded in the absence of persuasive evidence that the retention of jurisdiction will result in manifest injustice to the respondent. *Vanity Fair Mills* v. *T. Eaton Co.,* 234 F. 2d 633, 645-646 (2nd Cir. 1956); *Burt* v. *Isthmus Development Company,* 218 F. 2d 353, 356-357 (5th Cir. 1955); *States Marine Lines, Inc.* v. *The M/V Kokei Maru,* 180 F. Supp. 255, 257 (N. D. Cal. 1960); *The Saudades,* 67 F. Supp. 820 (E. D. Pa. 1946). This is so even though the more convenient forum may be the foreign one. *The Saudades,* supra.

Meneg's motion was supported by a series of affidavits stressing the inconveniences it would suffer if the district

court retained jurisdiction. Mobil countered with a series of affidavits stressing the inconveniences it would suffer if relegated to a civil court in Venezuela. The necessary limits of this opinion will not permit a detailed discussion of the countervailing evidence on these issues. The balance of conveniences seems to favor Meneg but slightly. This is clearly not sufficient to outweigh other considerations of superior significance.

The issue of convenience aside, the more important question is whether the relinquishment of jurisdiction would best serve the ends of justice. The court below seemed to think that it would, but with this we cannot agree. There is no evidence in the record that the retention of jurisdiction would seriously prejudice Meneg. However, the relinquishment of jurisdiction could result in serious detriment to Mobil's and Socony's causes of action. It would relegate the libellants to a foreign forum in which the procedural remedies are far less conducive to the fair administration of justice than those available under our admiralty rules. The mode of trial, the lack of adequate pretrial procedures, and the limitation on the manner in which expert testimony may be offered do not comport with our concepts of fairness.

The amended libel alleges that the negligence of Meneg consisted of its failure to: provide a safe berth for the vessel; maintain the berth in a safe condition; provide skilled and competent personnel and supervision; maintain proper air pressure in loading the cargo; and, properly man the loading operations. We have paraphrased the allegations in the interest of clarity. It appears from the affidavits, including those filed by Meneg, that some of the evidence necessary to prove the allegations is in the pos-

session of the respondent's employees. Under these circumstances resort to the remedies available under our admiralty rules is clearly indicated.

The libellants "may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes." RULES OF PRACTICE IN ADMIRALTY, &c., rule 30A(a), 28 U. S. C. A. The deposition may be used for any one of the several purposes enumerated in subdivision (d) of the cited rule. Upon motion of the libellants, the respondent may be ordered to produce and permit "the inspection and copying" of any designated documents, papers, books, etc., not privileged, which constitute or contain evidence. RULES OF PRACTICE IN ADMIRALTY, &c., rule 32, 28 U. S. C. A. The procedural practices available in the courts of Venezuela are in no way comparable. As the respondent points out, the libellants may be under some handicap in their attempt to take the depositions of foreign witnesses but this handicap is easily surmountable. The district court is vested with authority to prescribe the terms and conditions under which depositions may be taken.

Meneg maintains that it will not be necessary for Mobil and Socony to resort to the procedural remedies available under our rules. The mere statement of this presumptuous proposition demonstrates its absurdity. The decision as to the need rests with the libellants. Doubtless the respondent could derive considerable solace from the power to control libellants' lawsuit but, fortunately for the libellants, our adversary system is not predicated on leaving such relevant decisions to one's opponent. Moreover, the suggestion that pretrial procedures are neither desirable nor necessary in a negligence action involving a million

dollars, and, by respondents' own count, at least fifteen issues, strains credulity.

The court below considered, but gave undue weight to, the possible difficulty in the application of foreign law. It held: "that to retain jurisdiction here might very well plague this Court with problems of foreign law 'all avoided if the case is litigated [in Venezuela] where it arose'." 236 F. Supp. 362, 368. This apprehension appears to be predicated wholly on conjecture. We have examined the pertinent provisions of the Civil Code of Venezuela and can perceive of no obstacle to their fair interpretation and application by the lower court. The principles of tort liability provided by the Code are similar in several respects to those applied in suits in admiralty in our courts.

We find it unnecessary to discuss other arguments advanced by the appellee in support of the decision of the court below; however, we have considered them and find them to be without merit.

The evidence in the record is plainly insufficient to support a conclusion that the retention of jurisdiction by the district court would result in manifest injustice to the respondent. Indeed, we believe that the retention of jurisdiction would best serve the ends of justice.

The judgment of the court below will be reversed and the matter will be remanded with directions that the suit be reinstated.

A True Copy:

Teste:

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Clerk of the
United States Court of Appeals
for the Third Circuit.